

**RECORDING REQUESTED BY:**

Lennar Mare Island, LLC  
690 Walnut Avenue, Suite 100  
Vallejo, California 94592

**WHEN RECORDED, MAIL TO:**

Department of Toxic Substances Control  
Region 1  
8800 Cal Center Drive  
Sacramento, California 95826  
Attention: Mr. Anthony J. Landis, Chief  
Office of Military Facilities

Recorded in Official Records,  
Solano County  
Doc# 200600039663  
3/31/2006 8:00 AM

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**COVENANT TO RESTRICT USE OF PROPERTY**

**ENVIRONMENTAL RESTRICTION**

Re: Portions of Investigation Area D1.2, Former Mare Island Naval Shipyard  
Eastern Early Transfer Parcel  
Vallejo, California

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This Covenant and Agreement ("Covenant") is made by and between Lennar Mare Island, LLC ("Covenantor"), the current owner of property situated on the Former Mare Island Naval Shipyard in Vallejo, County of Solano, State of California, and the California Department of Toxic Substances Control (the "Department"). Pursuant to California Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in California Health & Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471 and H&SC section 25355.5, that the use of the Property be restricted as set forth in this Covenant.

## ARTICLE I – STATEMENT OF FACTS

1.01 The general location of the Property, totaling approximately 27 acres, is depicted in Exhibit “A”, attached hereto and incorporated herein by this reference. The Property is located on the eastern side of Mare Island and comprises a portion of the area now generally known as the Eastern Early Transfer Parcel of Mare Island (“EETP”), in the County of Solano, State of California. The Property is more particularly depicted and described in Exhibits “B” and “C”, attached hereto and incorporated herein by this reference.

1.02 On March 26, 2002 the ownership of the EETP, which included the Property, was transferred from the United States Department of the Navy (“Navy”) to the City of Vallejo (“City”), and then immediately on to Lennar Mare Island, LLC, a California corporation.

1.03 The EETP was previously part of the Navy’s Mare Island Naval Shipyard. In April 2002, the Navy and the Department entered into a Federal Facility Site Remediation Agreement (“FFSRA”). Under the FFSRA for the EETP, the Navy retains its obligations under the federal and state laws concerning the remediation of hazardous substances on the Property due to the activities of the Navy.

1.04 The Covenantor, the Department, and the City of Vallejo (the “City”) entered into a Consent Agreement on April 16, 2001 (“Consent Agreement”), whereby the Covenantor is obligated to perform remedial actions, achieve regulatory closure, and comply with operation and maintenance requirements such as the requirements of this Covenant, on the Property. The Consent Agreement is on file with the Department and the Covenantor. The Consent Agreement subdivides the EETP into eight (8) Investigation Areas. The Property comprises a portion of one of these Investigation Areas—Investigation Area D1. The Property for this Covenant comprises the northeastern section of Investigation Area D1.2 which is part of Investigation Area D1 as depicted in Exhibit A.

1.05 The EETP is subject to the terms of a Pre-Decision Covenant to Restrict Use of Property (“Pre-Decision Covenant”), recorded on March 26, 2002. The Pre-Decision Covenant is to be released for each Investigation Area, or portion thereof, that receives regulatory closure pursuant to the Consent Agreement. This Covenant is required to achieve regulatory closure for a portion of Investigation Area D1.2, which is part of Investigation Area D1, and it is anticipated that the Pre-Decision Covenant will be released for Investigation Area D1.2 following the recordation of this Covenant in Solano County.

1.06 As detailed in the *Final Investigation Area D1 Remedial Action Plan*, approved by the Department on May 27, 2004 (“D1 RAP”), certain soils on the Property contain lead, polychlorinated biphenyls (“PCBs”), and total petroleum hydrocarbons (“TPH”). The following concentrations of these contaminants in certain soils on the Property are above the screening levels for unrestricted use: (1) lead in the range of 420 to 940 milligrams per kilogram (“mg/kg”); (2) PCBs in the range of 0.22 to

0.63 mg/kg; and (3) TPH motor oil in the range of 1,000 to 1,500 mg/kg. As a result of these contaminants being present in certain soils above the screening levels for unrestricted use, the use of the Property is restricted as established in this Covenant.

1.07 The Department has concluded that the Property does not present an unacceptable risk to human health and the environment provided the following uses are prohibited: residences, hospitals, schools for persons under the age of 18, or day care centers.

## ARTICLE II – DEFINITIONS

2.01 Department. “Department” means the State of California by and through the Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Owner. “Owner” means the Covenantor and shall include the Covenantor’s successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

2.03 Occupant. “Occupant” means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

## ARTICLE III – GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, “Restrictions”), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5 (a)(1)(C) and Civil Code section 1471, and California Code of Regulations, title 22, section 67391.1; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding Upon Owners, Occupants and Lessees. Pursuant to H&SC section 25355.5 (a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignee, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03 Written Notification of the Presence of Hazardous Substances. Prior to the sale, lease, or sublease of the Property, or any portion thereof, the Owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases entered into for any portion of the Property on or after the date of recordation of this Covenant.

3.05 Conveyance of the Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, or by administrative order.

3.06 Costs of Administering the Covenant. The terms of this Covenant run with the land and will continue in perpetuity unless a variance or termination is granted pursuant to Article VI herein. The Department has incurred and will in the future incur costs associated with the administration of this Covenant. Pursuant to California Code of Regulations, title 22, section 67391.1(h), the Department's costs associated with the administration of this Covenant will be paid.

#### **ARTICLE IV – ENVIRONMENTAL RESTRICTIONS**

4.01 Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as a residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 18 years.
- (d) A day care center for children.
- (e) Growing of plants in native soil for human consumption.

4.02 Access. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department to protect public health or safety or the environment.

4.03 Soil Management. Soils shall not be transported off of the Property for reuse or disposal without at least 10 business days prior notice to the Department. Movement of soil off the Property shall be in compliance with the applicable provisions of the Operation and Maintenance Plan for Investigation Area D1.2 Land Use Covenants, which shall be submitted to the Department for approval within sixty (60) days of the date of recordation of this Covenant. All soil taken off of the Property shall be properly managed according to applicable state and federal law.

4.04 Inspection and Reporting. The Owner of the Property, or a portion thereof, shall perform an annual inspection to verify that use of the Property is in compliance with the provisions of this Covenant. Based on the annual inspection, a report shall be developed and submitted to the Department and the City of Vallejo documenting the findings of the annual inspection. The first report shall be submitted to the Department and the City of Vallejo one year following the date of recordation of this Covenant and shall be submitted to the Department and the City of Vallejo annually thereafter. The report shall describe the monitoring and inspection of the Property, or a portion thereof, for compliance with this Covenant and state the deficiencies and measures taken and necessary to address these deficiencies.

4.05 Notification to the Department. The Owner of the Property, or a portion thereof, shall notify the Department within 3 business days of discovery of activity that violates or is inconsistent with the provisions of this Covenant. The notification shall include any corrective measures taken or planned to address the violation or inconsistency. The Owner shall notify the Department within 3 business days of discovery of a previously unknown hazardous substances release to the environment, and in all cases the Owner shall comply with applicable notification requirements under state and federal law. The notification shall include a description of any interim containment or corrective measures taken or planned.

## **ARTICLE V – ENFORCEMENT**

5.01 Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to obtain injunctive relief prohibiting commencement or continuation of any uses or activities restricted by this Covenant. Violation of this Covenant shall be grounds for the Department to seek or file enforcement actions as provided by law.

## **ARTICLE VI – VARIANCE, TERMINATION, AND TERM**

6.01 Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. The Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity. One sufficient ground for approval of termination or modification by the Department of the Covenant, in the exercise of its discretion, shall be that the applicant has demonstrated to the Department that the rationale set forth in the Investigation Area D1 RAP and this Covenant for the restriction sought to be terminated

or modified does not apply to the portion of the Property for which the restriction would be terminated or modified.

## ARTICLE VII – MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 Department References. All references to the Department include successor agencies/departments or any other successor entity.

7.03 Recordation. The Covenantor shall record this Covenant, with Exhibits “A”, “B” and “C”, in the County of Solano within ten (10) days of the Covenantor’s receipt of a fully executed original.

7.04 Notices. Whenever any person gives or serves any notice (“Notice” as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested as follows:

To Owner:

Ms. Sheila Roebuck  
Lennar Mare Island, LLC  
690 Walnut Avenue, Suite 100  
Vallejo, California 94592

To Department:

Department of Toxic Substances Control  
Region 1  
8800 Cal Center Drive  
Sacramento, California 95826  
Attention: Mr. Anthony J. Landis, Chief  
Office of Military Facilities

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any portion of the Restrictions or any other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.

7.06 Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.07 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.08 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

7.09 Statutory References. All statutory references include successor provisions.

7.10 Counterparts. This Covenant may be executed in counterparts.

IN WITNESS WHEREOF, the Parties execute this Covenant.

COVENANTOR: LENNAR MARE ISLAND, LLC

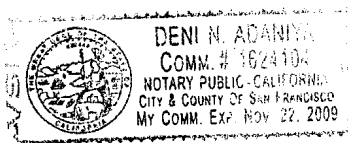
By: [Signature]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: 3/21/06

STATE OF CALIFORNIA )  
COUNTY OF San Francisco )

On this 21<sup>st</sup> day of March, in the year 2006, before me  
Deni N. Adaniya, personally appeared  
Thomas Sheaff, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Signature]





## Notary Seal Declaration

Pursuant to Govt. Code 27361.7, I certify under penalty of perjury that the notary seal on the document to which this declaration is attached reads as follows:

**Name of Notary:** Deni N. Adaniya

**Commission Number:** 1624104

**Place of Execution:** City & County of San Francisco

**Date Commission Expires:** Nov. 22, 2009

**Date:** 3/29/06

  
First American Title

IN WITNESS WHEREOF, the Parties execute this Covenant.

THE CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

By: Anthony J. Landis  
Name: Anthony J Landis  
Title: Branch Chief  
Date: 3-27-06

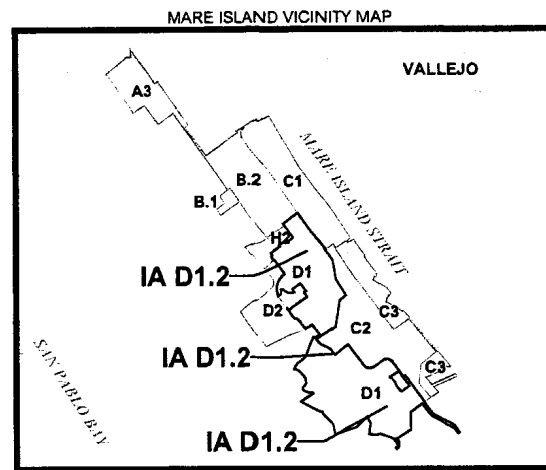
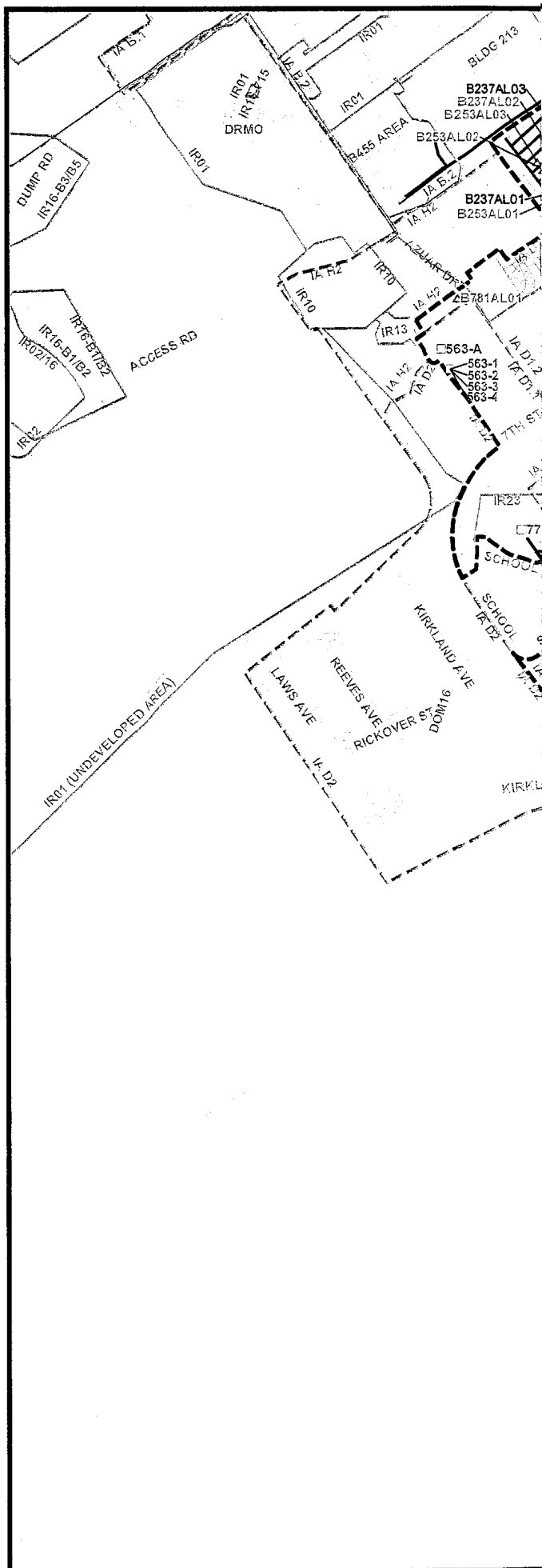
STATE OF CALIFORNIA                     )  
   )  
COUNTY OF Sacramento             )

On this 27<sup>th</sup> day of March, in the year 2006, before me  
Kathleen C. Duncan, personally appeared  
Anthony J. Landis, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~  
executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Kathleen C. Duncan



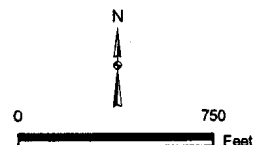


#### LEGEND

- IWPS PUMP STATIONS
- ⊗ UNDERGROUND STORAGE TANK UNKNOWN
- UNDERGROUND STORAGE TANK
- ▲ PCB SITES WITH LUC
- ▲ PCB SITES
- INVESTIGATION AREA
- ABANDONED FOPL SEGMENT
- FLUSHED FOPL SEGMENT
- NOT LOCATED FOPL SEGMENT
- REMOVED FOPL SEGMENT
- NOT IDENTIFIED DURING PREVIOUS INVESTIGATIONS
- INDUSTRIAL WASTEWATER PIPELINE (IR14)
- ▨ APPROXIMATE BOUNDARY OF LUC
- LBP IN SOIL SITES
- EARLY TRANSFER PARCEL
- GROUP I SITES
- GROUP II, III SITES
- ▭ INVESTIGATION AREA D1
- ▭ INVESTIGATION AREA D1.2
- ROADS
- STRUCTURES
- WATER
- WETLANDS

#### LAND USE

- INDUSTRIAL
- EDUCATIONAL/CIVIC
- LOW DENSITY
- MEDIUM DENSITY
- HIGH DENSITY
- HISTORICAL CORE
- MIXED-USE
- PARKS



### EXHIBIT A GENERAL LOCATION OF INVESTIGATION AREA D1.2

INVESTIGATION AREA D1.2  
LAND-USE COVENANT  
LENNAR MARE ISLAND, VALLEJO, CALIFORNIA

**Lennar Mare Island, LLC**

**A portion of A.P.N. 066-010-001 and 066-030**

**CH2M HILL Investigation Area D1.2 – Parcel B – Land-Use Covenant Parcel**

**Exhibit B  
Legal Description**

All that real property situate on the lands commonly known as Mare Island Naval Shipyard, in the City of Vallejo, County of Solano, State of California, described as follows:

Portions of the "Primary Eastern Early Transfer Parcel", described as "Parcel No. 1" in the Grant Deed to Lennar Mare Island, LLC, a California limited liability company, which was recorded on March 26, 2002, Series No. 2002-37966, Solano County Official Records, more particularly described as follows:

**Land-Use Covenant**

Commencing at a 2-1/2" aluminum disk monument in a concrete curb, stamped "Mare Island Control Point 22, McGill-Martin-Self, Orinda CA", as shown on that certain Record of Survey filed November 14, 1996, in Book 21 of Surveys at Page 94 of Official Records of Solano County. Having established grid coordinates of North 1,794,824.409 feet and East 6,485,592.711 feet, referenced to the California Coordinate System of 1983, Zone 2 as given in that particular report entitled, "Summary Report, Horizontal Control Network, Mare Island Naval Shipyard, Vallejo, California, MMS Job #1587, McGill Martin Self, Inc.";

thence, North 61°32'02" West, 2064.14 feet to an angle point in the boundary of a 115.20 acre parcel of land known as Investigation Area D1.1 of the Former Mare Island Naval Shipyard Eastern Early Transfer Parcel, a point with California Coordinate System of 1983, Zone 2 coordinates of North 1,795,808.26 feet and East 6,483,778.13 feet, the POINT OF BEGINNING; thence, along said boundary, the following two (2) courses:

1. along a 415.00-foot radius curve to the left, through a central angle of 35°58'23", an arc distance of 260.56 feet, subtended by a chord of North 8°12'39" East, 256.30 feet
2. North 35°39'03" West, 378.32 feet

thence, leaving said boundary, North 54°20'57" East, 299.65 feet;

thence North 57°14'07" East, 291.40 feet, to the approximate northeasterly side of Walnut Avenue;

thence, along said northeasterly side of Walnut Avenue, North 35°42'01" West, 2712.87 feet to the exterior boundary of Investigation Area D1.2, Parcel B, of the Former Mare Island Naval Shipyard Eastern Early Transfer Parcel;

thence, along said exterior boundary, the following twenty-three (23) courses:

1. North 54°11'05" East, 448.94 feet
2. South 41°28'12" East, 24.43 feet
3. South 35°44'45" East, 193.18 feet
4. South 31°03'34" East, 83.91 feet
5. South 35°41'50" East, 370.69 feet
6. South 39°13'13" East, 114.41 feet
7. South 35°37'14" East, 123.60 feet
8. South 42°06'29" East, 64.22 feet
9. South 35°36'40" East, 196.36 feet
10. South 12°14'38" East, 16.81 feet
11. South 35°40'14" East, 19.19 feet
12. South 21°35'29" East, 6.83 feet
13. South 35°46'21" East, 86.33 feet
14. South 54°23'37" West, 20.59 feet
15. South 35°47'37" East, 266.97 feet
16. along a 400.00-foot radius curve to the right, through a central angle of 26°10'57", an arc distance of 182.79 feet, subtended by a chord of South 22°42'09" East, 181.20 feet
17. South 9°36'40" East, 403.34 feet
18. along a 300.00-foot radius curve to the left, through a central angle of 26°09'08", an arc distance of 136.93 feet, subtended by a chord of South 22°41'15" East, 135.75 feet
19. South 35°45'49" East, 512.11 feet
20. South 54°34'39" West, 257.49 feet
21. South 10°15'51" West, 781.64 feet
22. South 54°16'40" West, 131.24 feet
23. North 35°43'19" West, 28.04 feet to the POINT OF BEGINNING.

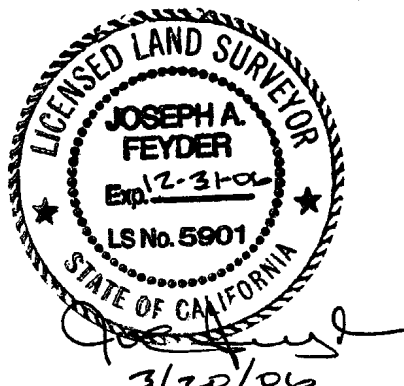
Containing an area of 26.87 acres, or 1,170,667 square feet, more or less, at ground level.

The Basis of Bearing for the above description is the California Coordinate System (1983), Zone 2.

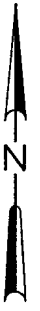
Distances shown are grid distances. To obtain ground distances multiply grid distances by 1.00006210.

The real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Date: March 20, 2006



# EXHIBIT C



INVESTIGATION  
AREA B

EETP Parcel  
No. 1 Boundary

INVESTIGATION  
AREA C1

IA D1.2 - Parcel B  
L.U.C.  
Area: 26.87 Acres

INVESTIGATION  
AREA H

INVESTIGATION  
AREA C3

INVESTIGATION  
AREA D1.1

INVESTIGATION  
AREA D1.2 - Parcel B

INVESTIGATION  
AREA C2

Retracement of  
the Joy Survey Line  
per 24-Surveys-51

EETP Parcel  
No. 1 Boundary

School Parcel

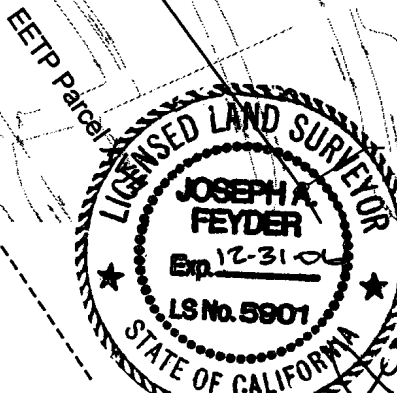
Cedar Avenue

INVESTIGATION  
AREA D1.1

INVESTIGATION  
AREA C2

Retracement of  
the Joy Survey Line  
per 24-Surveys-51

P.O.B. - L.U.C.



0' 200' 400' 600'

**CH2MHILL**

INVESTIGATION AREA - D1.2 - PARCEL B - L.U.C.

PLAT OF REAL PROPERTY FOR  
LENNAR MARE ISLAND, LLC

SCALE: 1"=400'

DRAWN BY: JF

DATE: MARCH 20, 2006

CHECKED BY: DD